

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37202

June 12, 2009

Opinion No. 09-119

Regulation of Municipal Traffic Schools

QUESTIONS

1. Is the city court bound by state law regarding the setting up and administration of traffic schools?
2. If so, is the city court clerk also bound by the same statute?
3. If so, is there a required minimum fee of \$50.00 and a maximum fee of \$175.00?

OPINIONS

1. Yes, if the school is set up pursuant to Tenn. Code Ann. § 55-10-307.
2. Yes, for the same reason.
3. No. The statute provides a range of possible payments, but it also provides that no one be excluded for inability to pay.

ANALYSIS

1. Tennessee Code Annotated § 55-10-301(b) gives county, municipal, and other local government entities the discretion to order a traffic law violator to attend a driver education course approved by the Department of Safety. Section 55-10-301(b) also sets forth particular requirements for such traffic schools. In 1995, this office opined that, pursuant to Tenn. Code Ann. § 55-10-307, which permits municipalities to adopt various state traffic laws and provisions, municipalities may operate a traffic school. Op. Tenn. Att’y Gen. 95-059 (May 25, 1995). However, we also opined that a municipal traffic school is subject to the requirements of Tenn. Code Ann. § 55-10-301(b) when the school is established pursuant to the provisions of Tenn. Code Ann. § 55-10-307. There have been no material changes in either statute that call into question the continuing viability of these conclusions.

Unless the General Assembly completely preempts a field of regulation, municipal regulation of the scheme that does not adversely affect the State scheme is generally valid. *City of Knoxville v. Garuin Leotto Currier*, No. 03A01-9801-CV-00038, 1998 WL 338195 (Tenn.Ct.App. June 26, 1998) (citing *Capital News Co., Inc. v. Metropolitan Government of Nashville and Davidson County*, 562 S.W.2d 430 (Tenn.1978)). However, municipal ordinances in conflict with and repugnant to a state law of statewide application are universally held to be invalid. *Id.* See also *Southern Railway Co. v. The City of Knoxville*, 223 Tenn. 90, 442 S.W.2d 619 (Tenn. 1968) (holding same). There is no language in Tenn. Code Ann. § 55-10-301(b) indicating that the general assembly desired to preempt the entire field of legislation regarding traffic schools. However, as stated, traffic schools established pursuant to Tenn. Code Ann. § 55-10-307 must comply with the requirements of Tenn. Code Ann. § 55-10-301(b).

2. For the same reasons stated above, it is the opinion of this office that city court clerks are likewise bound by the requirements of Tenn. Code Ann. § 55-10-301(b).

3. Tennessee Code Annotated § 55-10-301(b)(2) provides that a reasonable fee between \$50.00 and \$175.00 may be assessed for traffic school. However, the statute also provides that no one may be excluded for inability to pay. Therefore, it is the opinion of this office that while the fee cannot exceed \$175.00, there is no mandatory minimum fee.

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T. C. A. § 55-10-301

West's Tennessee Code Annotated Currentness

Title 55. Motor and Other Vehicles (Refs & Annos)

Chapter 10. Accidents, Arrests, Crimes and Penalties (Refs & Annos)

Part 3. Penalties and Procedure (Refs & Annos)

➔ § 55-10-301. Class C misdemeanors; driver education; fees

(a) Any person violating any of the provisions of chapters 8 and 9 of this title and parts 1-5 of this chapter where a penalty is not specifically prescribed commits a Class C misdemeanor.

(b)(1) Any person violating any of the provisions of chapters 8 and 9 of this title and parts 1-5 of this chapter may be required, at the discretion of the court, to attend a driver education course approved by the department of safety in addition to or in lieu of any portion of other penalty imposed; provided, that the course is approved by the department, it may be operated and conducted by a:

(A) County, municipality or other entity of local government;

(B) Nonprofit organization as defined by the Internal Revenue Code, 26 U.S.C. § 501(c)(3); or

(C) Private entity, provided the entity meets all of the requirements of § 40-35-302(g) for private entities providing misdemeanor probation supervision services.

(2) A reasonable fee between fifty dollars (\$50.00) and one hundred seventy-five dollars (\$175) may be assessed for the driver education or driver improvement course; provided, that no one shall be refused admittance for inability to pay. This fee shall apply only to driver improvement courses that may be required pursuant to this section, and shall not apply to any program offered pursuant to the provisions of title 49, chapter 1, or to any other driving instruction **school**.

(3) By operating a driver education or improvement course pursuant to the provisions of this subsection (b), the entity operating or conducting the course consents to the inspection of all records concerning the course by the department of safety; provided, that inspection made pursuant to this subdivision (b)(3) shall not preclude inspection of any records pursuant to any other provision of law.

(4) Each court clerk shall provide a list of approved entities in the county to any person ordered to attend a driver education or improvement course.

(5) Upon certification to the court clerk that a court ordered driver education or improvement course has been completed, the court clerk shall report the completion to the department of safety. The report shall be accomplished on the abstract of record of the court referenced in § 55-10-306.

(c) Subsection (b) shall not apply to any person who holds a Class A, B, or C license and is charged with any violation, except a parking violation, in any type of motor vehicle.

CREDIT(S)

1931 Pub.Acts, c. 82, § 16; 1937 Pub.Acts, c. 245, § 6; 1955 Pub.Acts, c. 329, § 103; 1971 Pub.Acts, c. 234, § 1; 1975 Pub.Acts, c. 162, § 1; 1981 Pub.Acts, c. 91, §§ 1, 2; 1989 Pub.Acts, c. 591, § 113; 1990 Pub.Acts, c. 869, § 1; 1995 Pub.Acts, c. 178, § 1, eff. July 1, 1995; 2001

Pub.Acts, c. 186, § 1, eff. July 1, 2001; 2005 Pub.Acts, c. 235, § 1, eff. Sept. 1, 2005; 2008 Pub.Acts, c. 1181, § 1, eff. July 1, 2008.

Formerly 1950 Code Supp., § 2700.17; Williams' Code, § 2696; § 59-1023.

HISTORICAL AND STATUTORY NOTES

2001 Pub.Acts, c. 186, § 1, rewrote subsec. (b), which previously read:

"(b)(1) Any person violating any of the provisions of chapters 8 and 9 of this title and parts 1-5 of this chapter may be required, at the discretion of the court, to attend a driver education course approved by the department of safety in addition to or in lieu of any portion of other penalty imposed.

"(2) A fee may be assessed for the driver improvement course and shall not exceed fifty dollars (\$50.00); provided, that it is conducted by any entity of local government or by a nonprofit organization as defined by the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and no one shall be refused admittance for inability to pay. This fee shall apply only to driver improvement courses which may be required pursuant to this section, and shall not apply to any program offered pursuant to the provisions of title 49, chapter 1, or to any other driving instruction **school**.

"(3) If the department approves a driver education course proposed by a county, the county may offer such course to any person eligible under subdivision (b)(1). The county may assess a fee of not more than fifty dollars (\$50.00) for the course; provided, that no one shall be refused admittance to the course for inability to pay. This fee shall apply only to driver improvement courses which may be required pursuant to this section, and shall not apply to any program offered pursuant to the provisions of title 49, chapter 1 or to any other driving instruction **school**."

2005 Pub.Acts, c. 235, § 1, added subsec. (c), pertaining to the application of subsec. (b).

2008 Pub.Acts, c. 1181, § 1, added subsec. (b)(5), relating to reporting of completion of court ordered driver's education or improvement course.

CROSS REFERENCES

Accessories before the fact, principals, and aiders and abettors, see §§ 39-11-401 and 39-11-402.

Alternative sentencing for misdemeanor convictions, see § 40-35-104.

Attempt, solicitation and conspiracy offenses, classification and penalties, see § 39-12-107.

Classification of misdemeanors, see § 40-35-110.

Motor vehicles, operation, speed limits, see § 55-8-152.

Penalties for designated classes of misdemeanors, see § 40-35-111.

Sentencing for misdemeanors, see § 40-35-302.

LIBRARY REFERENCES

Key Numbers

Automobiles ⌘359.

Westlaw Key Number Search: 48Ak359.

Corpus Juris Secundum

C.J.S. Motor Vehicles § 596.

RESEARCH REFERENCES

Treatises and Practice Aids

Tenn. Prac., Pattern Jury Instr. - Criminal 38.14(C), T.P.I.--Crim. 38.14(C). Leaving the Scene of an Accident Resulting in Damage to a Vehicle [Exceeding Four Hundred Dollars (\$400)].

NOTES OF DECISIONS

In general 1

Right to trial by jury 2

1. In general

A city judge in a city chartered under the city manager-commission charter contained in § 6-18-101 et seq. can require or permit violators of municipal **traffic** ordinances to attend a safety **school** in lieu of or in addition to a fine or other punishment only if the offense and § 55-10-301 have been adopted by ordinance pursuant to the provisions of § 55-10-307. Op.Atty.Gen. No. 95-059, May 25, 1995.

The fifty dollar fee limitation of § 55-10-301(b)(2) would apply to municipally run **schools** if the municipality adopts the provisions of § 55-10-301. Op.Atty.Gen. No. 95-059, May 25, 1995.

2. Right to trial by jury

For purposes of entitlement to jury trial, offense proscribed under general speeding laws and punishable by jail term was not "small offense" under state law. T.C.A. § 55-10-301; Const. Art. 1, § 6. State v. Dusina, 1989, 764 S.W.2d 766. Jury : 22(2)

T. C. A. § 55-10-301, TN ST § 55-10-301

Current with laws from the 2009 First Reg. Sess., eff. through May 19, 2009.

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